Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 2000

Robert W. Mangieri,
Petitioner,

V.

Paul Mangieri,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

It is axiomatic that Federal Courts are courts of limited jurisdiction. If a matter is not set within the jurisdiction of the federal courts by act of Congress, then it is reserved to the state courts. Where the parties are from different states and the amount in controversy is more than $75,000.00, however, diversity of citizenship exist, and the case is theoretically within the federal court's jurisdiction.

Where exactly does the doctrine of federalism draw the line between the jurisdiction of federal courts in equity and state courts in matters of probate? This Court has not addressed this question since its 1946 decision in Markham v. Allen, 326 U.S. 490. It frequently is said that because federal equity jurisdiction is limited to that exercised by the English Court of Chancery in 1789, the federal courts have no jurisdiction in probate matters. Although it is true that a federal court may not directly probate a will or undertake the administration of an estate, the statement that federal courts have no probate jurisdiction is much too broad.

In the case at bar, the Petitioner was not specifically provided for in his father's Will; nor was he specifically disinherited from his father's Will. Petitioner sought to have a federal court, sitting in diversity to apply the Massachusetts "Omitted Child" statute, Mass. Gen. Laws c. 191, s. 20.

In these circumstances, the first question presented is:

1. May a federal court sitting in diversity adjudicate the rights of an individual to share in an estate that has already been distributed by a state court?

If certiorari is granted on the first question presented, the following question should also be reviewed to provide full relief in this case:

2. Once a federal court determines the rights of an individual in an estate, is it permissible for the court to order the executor to distribute the estate accordingly?

PARTIES TO THE PROCEEDINGS

Petitioner Robert W. Mangieri was the Plaintiff-Appellant below. Respondent Paul Mangieri was the Defendant-Appellee below.

PARENT COMPANIES AND AFFILIATES

Petitioner Robert W. Mangieri has no corporate parent, subsidiary, or affiliate.

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PETITION FOR A WRIT OF CERTIORARI

Robert W. Mangieri petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals affirming the district court (App. 1) is reported at 226 F.3d 1 (1st Cir. 2000). The opinion of the district court granting summary judgment to the Respondent (App. 5) is reported at 99-CV-11812-REK (D. Mass 1999)

JURISDICTION

The judgment of the court of appeals (App. 1) was entered on September 7, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. s. 1254(a).

STATUTES INVOLVED

This case involves section 20 of the Massachusetts General Laws c. 191, s. 20 the "Omitted Child" statute, as well as the federal diversity statute, 28 U.S.C. s. 1332.

STATEMENT

A. Introduction

This is a federal diversity case filed by the Petitioner, Robert W. Mangieri (hereinafter "Petitioner") against the Respondent, Paul Mangieri (hereinafter "Respondent"), on August 31, 1999. The complaint alleged a claim under Mass. Gen. Laws c. 191, s. 20, the "omitted child" statute, as well as alleging a breach of fiduciary duty count based on the Respondent's actions as executor of the estate of Joseph W. Mangieri. Petitioner is the son and only heir of the testator and claims that he was inadvertently left out of the testator's Will.

On or about November 2, 1984, the testator, Joseph F. Mangieri, executed a Will (hereinafter the "1984 Will") in which he divided his estate between his brother, Robert L. Mangieri, his brother Sal Mangieri, Sal's wife Josephine Mangieri, and other beneficiaries. The 1984 Will did not provide for the testator's son, Robert W. Mangieri. The 1984 Will contained a clause indicating that any children not provided for in the Will were *intentionally* omitted and not omitted by accident or mistake.

On or about February 12, 1987, Joseph F. Mangieri executed an instrument as his last Will and Testament (hereinafter the "1987 Will"). This 1987 Will did not make any provision for the testator's son and only child, the Petitioner. In contrast to the 1984 Will, the 1987 Will did not expressly state that this omission was intentional; nor did it expressly state that the omission was not occasioned by accident or mistake. Instead the new 1987 Will left the entire estate to the testator's nephew, Respondent Paul Mangieri. Respondent was also named as the executor of the Will.

On or about May 28, 1997, the testator directed his attorney to draw up a new Will (hereinafter the "1997 Will") which provided substantially all of the testator's estate for his son, the Petitioner, and such a Will was drawn up. The testator did not provide for the Petitioner during his lifetime and on June 10, 1997, the testator died before he could sign the 1997 Will.

B. Massachusetts Probate Court Proceedings

Respondent Paul Mangieri attempted to file a copy of the 1987 Will with the Barnstable County probate court in order to probate the testator's estate. Petitioner then filed for an administration asserting that the original of the 1987 Will had been destroyed and that the decedent died intestate. The probate court (Scandurra, J.) made detailed findings of fact. After a trial addressing *only* the issues of undue influence and revocation, a copy of the 1987 Will was admitted to probate. The Respondent is now in possession and/or control of the assets of the testator's estate.

C. The District Court's Grant of Summary Judgment

In the district court, Petitioner claimed that he is entitled to a share of the testator's estate as if the testator died intestate; as well as alleging a count of breach of fiduciary duty. Petitioner filed a Motion for an Ex Parte Temporary Restraining Order on or about August 31, 1999. The Ex Parte TRO was denied by the district judge after a hearing on September 2, 1999. (App. 7) A hearing on a TRO was held on September 8, 1999 after notice was given to Respondent's attorney. Petitioner then filed a Motion for a Preliminary Injunction on September 13, 1999. On September 15, 1999, Respondent filed a Motion to Dismiss which the trial court chose to construe as a Motion for Summary Judgment.

Petitioner filed an extensive Motion in Opposition to Respondent's Motion to Dismiss. A hearing was not held on either the Motion for a Preliminary Injunction or the Motion to Dismiss. In an MEMORANDUM and ORDER (App. 11) dated November 4, 1999, the district court (Keeton, J.) ordered that Respondent's Motion to Dismiss be allowed, Petitioner's Motion for Preliminary Injunction be denied, and that judgment be granted for the Respondent, Paul Mangieri.

The district court stated in its Memorandum that: (1) the trial court lacked authority to hear and resolve the case at bar because it was within the jurisdiction of the Massachusetts Probate Court; (2) the trial court lacked jurisdiction or, in the exercise of discretion, should

not exercise jurisdiction over this case; (3) Petitioner's "omitted child" claim should have been heard in the Massachusetts Probate Court pursuant to Mass. Gen. Laws c. 215, s. 3 (App. 10); (4) if Petitioner was asking the trial court for review of the Massachusetts Probate Court's decision, that review was properly had before the Massachusetts Appeals Court or the Supreme Judicial Court. Petitioner filed a timely Notice of Appeal with the United States District Court on November 30, 1999.

D. The Court of Appeals' Decision

After a oral arguments on August 4, 2000, the United States Court of Appeals for the First Circuit affirmed the decision of the district court in almost every particular.

Although it cited this Court's decision in Markham v. Allen and some case law from the Second Circuit, the First Circuit offered scant analysis when it stated the general rule that "Under the probate exception to diversity jurisdiction, 'a federal court may not probate a will, administer an estate, or entertain an action that would interfere with pending probate proceedings in a state court or with a state court's control of property in its custody." (App. 3).

However, the court subsequently acknowledged that "[t]he precise scope of the probate exception has not been clearly established," it is clear that "[a]s a general matter, courts tend to view the probate exception as extending to all suits 'ancillary' to the probate of a will." (App. 3). Here the First Circuit's decision contained only scant citation to case law; the only First Circuit case being Kittredge v. Stevens, 126 F.2d 263, 266 (1st Cir. 1942), a factually distinguishable case that is almost fifty years old.

The First Circuit rejected the Petitioner's argument that the case at bar is factually distinguishable from the cases cited in the district court decision. The court of appeals failed to properly examine and analyze the case law of other circuits, and failed to reexamine the older case law that exists in the First Circuit.

REASONS FOR GRANTING THE PETITION

1. THE FIRST CIRCUIT'S DECISION WAS CONTRARY TO ESTABLISHED CASE LAW FROM SEVERAL OTHER JURISDICTIONS AND CONSTRUES THE PROBATE COURT EXCEPTION TOO BROADLY IN VIOLATION CONGRESS' GRANT OF AUTHORITY TO THE LOWER FEDERAL COURTS.

The First Circuit's decision in the case at bar establishes a sweeping new exception to federal diversity jurisdiction. Under 28 U.S.C. s. 1332(a)(1), a federal court, sitting in diversity may interpret state substantive law if (a) the parties are from different states, (b) the amount in controversy is more than $75,000.00. The mere fact that the district court, in the exercise of the jurisdiction which Congress has conferred upon it, is required to interpret state law is not in itself a sufficient reason for withholding relief to petitioner. Meredith v. Winter Haven, 320 U.S. 228. Such are the facts in the case at bar.

Despite all this, the First Circuit, in affirming the district court in this case, ruled that the federal courts "either lack jurisdiction . . . or in the exercise of discretion should not exercise jurisdiction to make any order that would be inconsistent with or otherwise impede completion of proceedings in that court before it has reached a final disposition." (App. 3). Such a ruling amounts, for practical purposes, to a judicially created exception to federal diversity jurisdiction, which, according to Article III of the United States Constitution, is in the exclusive power of Congress to regulate. Not only is the First Circuit's decision an open invitation for confusion and for proper federal litigation to be denied an acceptable forum for their claims, it is in direct contravention of the explicit grant of authority to federal courts in Article III of the Constitution.

2. THE FIRST CIRCUIT'S DECISION IS CONTRARY TO THE DECISIONS OF THIS COURT.

This Court has long recognized the power and limitations of the federal court system. "It is true that a federal court has no jurisdiction to probate a will or administer an estate, the reason being that the equity jurisdiction conferred by the Judiciary Act of 1789, which is that of the English Court of Chancery in 1789, and did not extend to probate matters." (citations omitted) Markham v. Allen, 326 U.S. 490, 494 (1946).

But it has been established by a long series of decisions of this Court that federal courts have jurisdiction in equity to entertain suits "in favor of creditors, legatees and heirs" and other claimants against a decedent's estate "to establish their claims" so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate, or control of the property in the custody of the state court. *Id.*

Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, (citations omitted), it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court. *Id.*

This Court went on to say that "[a]lthough in this case petitioner sought a judgment in the district court ordering defendant executor to pay over the entire net estate to the petitioner upon an allowance of the executor's final account, the judgment declared only that petitioner 'is entitled to receive the net estate of the [testator] in distribution, after the payment of expenses of administration, debts, and taxes.' The effect of the judgment was to leave undisturbed the orderly administration of decedent's estate in the state probate court and to decree petitioner's right in the property to be distributed after its administration. This, as our authorities demonstrate, is *not an exercise of probate jurisdiction or an interference with property in the possession or custody of a state court*." (emphasis added) Markham at 495.

Here is where the decision of the court of appeals in this case is in direct controversy to this Court's position. It is tantamount to ignoring Congress' grant of judicial authority to the lower federal courts and ignoring this Court's decisions.

In Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33 (1909), the Supreme Court explained that [a] citizen of another state may establish a debt against the estate [through an action in federal court]. But the debt thus established must take its place and share of the estate as administered by the probate court; and it cannot be enforced by process directly against the property of the decedent. In like manner, a distributee, citizen of another state, may establish his right to a share in the estate, and enforce such adjudication against the administrator personally, or his sureties; or against any other parties subject to liability, or in any other way which does not disturb the possession of the property by the state court. *Id.* at 44 (internal quotations and citations omitted). In the case at bar, the Petitioner's requested relief is well within the powers of the federal courts.

The Petitioner acknowledged that this Court has also set limitations on the types of remedies that are available in the federal forum: " the courts of the United States, while they may exercise the jurisdiction, and may make decrees binding upon the parties, cannot seize and control the property which is in the possession of the state court." *Id.* at 44.

This Court tempered the limitations of federal diversity jurisdiction by stating that "it is to be presumed that the probate court will respect any adjudication which might be made in settling the rights of parties in this suit in the Federal court. It has been frequently held in this court that a judgment of a Federal court awarding property or rights, when set up in a state court, if its effect is denied, presents a claim of Federal right which may be protected in this court." *Id.* at 46. See also McClellan v. Carland, 217 U.S. 268, 281 (1910).

Given the First Circuit's sweeping ruling in this case, being directly in contrast to this Court's decisions and ripe with the possibilities of confusion, this Court should grant the petition.

3. THE LOWER COURTS NEED FURTHER GUIDANCE ON THE OUTER BOUNDS OF FEDERAL DIVERSITY JURISDICTION IN PROBATE MATTERS

The decisions of the courts of appeals present a broad array of decisions that could benefit from a concise ruling from this Court. The Second Circuit, Fifth Circuit, and Eleventh Circuits all construe the probate exception narrowly, allowing the greatest possible extent of federal diversity jurisdiction. The Seventh Circuit seems to be in the middle of the spectrum, construing the probate exception more broadly than some and more limited than others. The Tenth Circuit applies a *de novo* review when the probate court exception is involved and looks primarily to the extent of state court jurisdiction to define their own. Yet the Fourth Circuit and perhaps the Eighth Circuit have held the probate exception limits federal diversity jurisdiction in order to preserve states' rights.

A. The Second Circuit

Recently, the Second Circuit decided the case of Ashton v. Josephine Bay Pauland C. Michael Paul Foundation, Inc., 918 F.2d 1065 (2nd Cir. 1990). The executors of an estate filed an interpleader action in federal court and sought an injunction to halt an accounting action in Florida Probate court. The district court granted the injunction and the Second Circuit affirmed, claiming that the probate exception does not prohibit the adjudication of rights in an estate in a federal court and does not prohibit a state court being bound by that adjudication of rights. *Id.* at 1071. The Second Circuit, however, cautioned that the probate exception is "one of the most mysterious and esoteric branches of the law of federal jurisdiction." Ashton at 1071 quoting Dragan v. Miller, 679 F.2d 712, 713 (7th Cir. 1982); cert. denied, 459 U.S. 1017.

Ashton quoted this Court's decision in Markham heavily when it went on to say: "it is thus well settled that a federal court may not probate a will, administer an estate, or entertain an action that would

interfere with pending probate proceedings in a state court or with a state court's control of property in its custody." Ashton at 1071 quoting Markham at 494. It is equally well settled, however, that the probate exception does not prevent a federal court from adjudicating rights to property in an estate. Where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court. *Id.*

As supporting authority, the Second Circuit has also decided Giardina v. Fontana, 733 F.2d 1047 (2nd. Cir. 1984) where a plaintiff-daughter brought action against her mother alleging that assignment of rights in deceased father's estate was obtained due to fraud and undue influence. Plaintiff requested a declaration that the assignment was null and void, an accounting of the estate, and declaration of a constructive trust in plaintiff's favor in spite of pending state probate proceedings. The district court abstained from jurisdiction.

The judge in the district court, in dismissing the second complaint, held that one branch of the relief sought, the recision of the assignment, was not directly within the probate exception, but that it was "so intertwined without the matters before the Probate Court, that abstention in favor of the State is appropriate..." *Id.* at 1047. The district judge also found that the accounting, and the constructive trust, all fell squarely within the probate exception, so that the district court did not have subject matter jurisdiction over them.

The Second Circuit reversed and remanded, holding that the requested declaration that the assignment was null and void did not fall within the probate exception to diversity jurisdiction, the accounting of property still subject to the probate proceeding was not within the jurisdiction of the court, yet the accounting of property that had already been given to the mother as a legatee was proper; and that the district court erred in declining to exercise its otherwise properly invoked diversity jurisdiction. Giardina at 1047-1048.

In Dulce v. Dulce, 1997 WL 642329, the plaintiff won a judgment against the defendant in federal district court. Before full satisfaction of the judgment could be obtained, the defendant died. The "personal representative" of the defendant's estate refused to probate the will or give the plaintiff any information regarding the estate.

The plaintiff asked the court to issue an order (1) declaring that he is "entitled to receive $67,000 from the [defendant's] estate," and (2) directing the personal representative to (a) produce the will before the court, (b) file the will for probate, and (c) name the person or persons who informed him of the defendant's death and from whom he obtained the will.

The court denied the plaintiff's requests on the ground that such relief was prohibited by the probate exception to federal court jurisdiction. As to the first request, the court held that it could not "declare . . . that plaintiff is 'entitled' to a particular sum," because "[t]he probate court will have to determine the priority of any competing claims." Likewise, ordering that the will be filed for probate "would amount to administration of that estate, a matter clearly beyond the jurisdiction of this court." The court did not specifically mention the plaintiff's other requests seeking discovery. 1997 WL 642329 at 1.

Yet, the court of appeals reversed, stating, "We believe the court was mistaken in its belief that the probate exception to federal court jurisdiction prohibited the grant of the relief plaintiff sought. In our view, the scope of the probate exception is not as broad as the district court believed it to be." *Id.*

Ashton and Dulce are representative of one area of the spectrum of decisions of the courts of appeal and illustrate that the Second Circuit construes the probate exception very narrowly.

B. The Fourth Circuit

In contrast to other circuits, the Fourth Circuit has construed the probate exception very broadly in order to preserve the rights of the states to adjudicate matters of probate. In Turja v. Turja, 118 F.3d 1006 (4th Cir. 1997), two brothers brought an action against a third brother alleging that he exercised undue influence over their mother, which led her to execute a will, at trust agreement, and related documents in his favor. After a bench trial, the district court concluded that the mother lacked the requisite mental capacity and was unduly influenced in executing the trust documents, and so voided them. The district court, however, found that it lacked jurisdiction because of the probate exception, refused to exercise jurisdiction over the will or rule

on the mother's capacity to execute it. The Fourth Circuit affirmed, stating that "this court has recognized the probate exception as a jurisprudentially limit on diversity jurisdiction. *Id.* at 1008 quoting Foster v. Carlin, 200 F.2d 943 (4th Cir. 1952).

The original complaint in Turja alleged six counts: lack of testamentary capacity, undue influence, fraud, action to set aside deed and other transfers, constructive trust, and unjust enrichment. The district court only dismissed counts I and II under the probate court exception. The district court tried all the remaining counts, and found that the testator lacked the requisite mental capacity, that the defendant in that case exercised undue influence, and that a trust and other legal documents should be set aside. *Id.* at 1008. The court did not examine the rest of the counts, finding resolution in the mental capacity and undue influence counts.

The Fourth Circuit cites Markham v. Allen and goes on to say that: The law is well settled that the federal courts have no jurisdiction over matters within the exclusive jurisdiction of state probate courts. However, as to matters which do not involve administration of an estate or the probate of a will, but which may be determined in a separate action *inter partes* in the courts of general jurisdiction of the state, the federal courts do have jurisdiction if the requisite diversity of citizenship exists. Turja at 1009 quoting Foster at 947. The Fourth Circuit in Foster did try to define the outer limits of their interpretation by saying that "the fact that the complainant prays for incidental relief which the federal court is without jurisdiction to grant does not prevent an adjudication by the federal court of the rights of the respective parties in an estate." Foster v. Carlin, 200 F.2d 943, 948 (1952).

The Fourth Circuit has made it their position that any cases that involve the interpretation of a will, the setting aside of a will, or matters that are within the exclusive jurisdiction of the state probate courts are outside the realm of federal diversity jurisdiction and are subject to the probate exception. Hence, the Fourth Circuit interprets the probate exception expansively and is in disagreement with the Second Circuit.

C. The Fifth Circuit

Only one case could be found from the Fifth Circuit court of appeals, Akin v. Louisiana Nat. Bank of Baton Rouge, 322 F.2d 749 (5th Cir. 1963) where plaintiff brought suit for an order that defendants recognize the rights of plaintiff as an adopted child and heir of the decedent, and that as an heir she was entitled to her forced portion of his estate (as provided by Louisiana law). The Fifth Circuit decided that the plaintiff's request was within the federal jurisdiction , since it was not a suit to annul a will, and the recognition of plaintiff's interest would not affect the probate of the will or the administration of the estate. Hence, the Fifth Circuit is in agreement with the Second Circuit since it construes federal diversity jurisdiction more broadly, and would allow the relief requested by the Petitioner.

D. The Seventh Circuit

In Loyd v. Loyd, 731 F.2d 393 (7th Cir. 1984), a widow brought a diversity action against the administrator of her deceased husband's estate, purchasers of real estate, and an attorney alleging fraud in connection with the sale of real estate and the closing of the decedent's estate. The district court granted summary judgment for the administrator and a motion to dismiss for the purchasers and the widow appealed. As an indication of the ethereal nature of the probate exception, the Seventh Circuit stated, "we simply do not think the exception is a hard and fast jurisdictional rule." *Id.* at 397.

In Dragan v. Miller, 679 F.2d 712, 713 (7th Cir. 1982); cert. denied, 459 U.S. 1017, the plaintiffs filed a diversity action in the district court to have defendants declared constructive trustees of estate assets. The district court dismissed the complaint as within the probate exception. Although the Seventh Circuit (Posner, J.) affirmed the dismissal, the court went on a long dissertation as to the merits of the probate exception.

"The federal court in this case is not being asked to probate a will or administer an estate. The testator's will was admitted to probate in an Illinois court; the court directed the distribution of his estate in accordance with the terms of the will; the estate was distributed to the

people who are the defendants in this action; and with that the probate proceedings ended. The plaintiffs do not want to enjoin or reopen that probate proceeding or reach property in the hands of the state court. There is no such property. The defendants have it, and the plaintiffs want to get it out of their hands. So not only does this lawsuit not ask the federal court to probate a will or administer an estate, but it does not seek to "interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court. Dragan at 713.

In Hamilton v. Nielsen, 678 F.2d 709 (7th Cir. 1982), the court of appeals addressed how far a federal court could go in interpreting state law. Factually, the case consisted of a plaintiff who filed an action as beneficiary of a trust in federal court alleging negligence of trustee and breach of fiduciary duty in the handling of trust assets. The Seventh Circuit found federal court jurisdiction to be proper.

The court stated that "This is not to say, of course, that federal courts can now probate wills in Illinois because the state has abolished its specialized probate court. Probate remains a peculiarly local function which federal courts are ill equipped to perform. However, they went on to say that "...so long as the federal court is faithfully applying Illinois law its decision will not have a systematically different effect than if the action had been brought in the corresponding state court of general jurisdiction. Hamilton at 710.

The Seventh Circuit's approach is rather confusing. It acknowledges the ephemeral nature of the probate exception; yet its decisions do not seem to follow either the Second Circuit or the Fourth Circuit and it seems more dependent on state law. This confusion, therefore, could be remedied by a decision from this Court.

E. The Eight Circuit

Although the Eighth Circuit decided the case of Bassler v. Arrowood, 500 F.2d 138 (8th Cir. 1974), the decision of the court of appeals simply quoted Markham v. Allen, yet based its decision primarily on the doctrine of abstention. Hence, it does not give much insight into the desires of that circuit.

F. The Tenth Circuit

The Tenth Circuit quotes heavily from Markham as well and offers an innovating standard of review in cases involving the probate court exception: ***de novo*** review. In Rienhardt v. Kelly, 164 F.3d 1296 (10th Cir. 1999) Plaintiff was the son of the testator and filed suit against his cousins in the district court of New Mexico, alleging tortious interference with inheritance which is a tort under New Mexico common law. Plaintiff prevailed at trial even though several state proceedings were pending. *Id.* at 1298-1299.

"We review a determination that the probate exception is not applicable under the same standard we apply to other reviews of subject matter jurisdiction: **de novo**." (emphasis added) *Id.* at 1299 quoting Beren v. Ropfogel, 24 F.3d 1226, 1228 (10th Cir. 1994). [F]ederal court do have jurisdiction to entertain suits in favor of... heirs and other claimants against a decedent's estate to establish their claims so long as the federal court does not interfere without he probate proceedings or assume general jurisdiction of the probate or control of the property in custody of the state probate court." Rienhardt at 1300 quoting Markham at 494. Because our jurisdiction is thus limited by the scope of the probate proceedings, federal jurisdiction over probate matters depends on state law. Rienhardt at 1300 quoting McKibben v. Chubb, 840 F.2d 1525, 1529 (10th Cir. 1988).

The standard for determining whether federal jurisdiction may be exercised is whether under state law the dispute would be cognizable only by the probate court. If so, the parties will be relegated to that court; but where the suit merely seeks to enforce a claim inter partes, enforceable in a state court of general jurisdiction, federal diversity jurisdiction will be assumed. Reinhardt at 1300 quoting McKibben v. Chubb at 1529.

In McKibben, the Tenth Circuit affirmed the district court's refusal to accept jurisdiction over a claim of undue influence in the execution of a will since it found the claim was "ancillary to a will challenge and belongs in state probate court." McKibben at 1530. In contrast, the Tenth Circuit accepted federal jurisdiction over challenged inter vivos transfers of property since the state court's of general jurisdiction could hear claims to include property in an estate. *Id.*

G. The Eleventh Circuit

The court of appeals for the Eleventh Circuit, in its opinion in Glickstein v. Sun Bank/Miami, 922 F. 2d 666 (11th Cir. 1991) has narrowly construed the probate exception. In Michigan Tech Fund v. Century National Bank, 680 F.2d 736 (11th Cir. 1982), the court permitted the district court to entertain an action against the decedent's estate that sought a declaration that the decedent's will conveyed certain of the decedent's assets to the plaintiffs. The fact that the resolution of the claims against the estate required the federal district court to interpret the will was insufficient to divest the court of diversity jurisdiction over the claim. Michigan at 740. The Eleventh Circuit allowed the defendants to maintain these claims against the estate despite the pending probate proceeding. Michigan at 738.

The decisions of the courts of appeals are plainly indicative of the need for clarification from this Court. With the Second Circuit, Fifth Circuit, and Eleventh Circuits on one side, the Seventh Circuit in the middle of the spectrum, the Tenth Circuit looking primarily to the extent of state court jurisdiction, and the Fourth Circuit restricting federal diversity jurisdiction the most, a resounding, clarifying decision from this Court is badly needed.

CONCLUSION

Petitioner is an individual who only wants his father's real and natural wishes to be carried out. He has suffered extensive hardship from the confusion and uncertainty that has followed this case. The Petitioner is only seeking the formulaic application of a state statute by a federal court properly sitting in diversity.

For the sake of judicial certainty and to bring all of the judicial circuits into the same realm of thinking, and for the reasons set forth in this Petition, including the vast range of federal appeals court decisions, this Court should grant certiorari in this case.

Respectfully Submitted,

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Counsel for Robert W. Mangieri

December 7, 2000

226 F.3d 1

United States Court of Appeals
For the First Circuit

No. 00-1084

ROBERT W. MANGIERI,
Plaintiff, Appellant,

v.

PAUL MANGIERI, AS EXECUTOR OF
THE ESTATE OF JOSEPH F. MANGIERI,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

[Hon. Robert E. Keeton, U.S. District Judge]

Before

Torruella, Chief Judge,
Wallace, [1] Senior Circuit Judge,
and Lipez, Circuit Judge.

Peter D. Prevett for appellant.
Pamela E. Terry, with whom Forman, Terry, Hickey & Garrahan L.L.P. was on brief, for appellee.

September 11, 2000

TORRUELLA, Chief Judge. This case arises from a will contest between plaintiff-appellant Robert W. Mangieri and defendant-appellee Paul Mangieri, who are, respectively, the only son and a nephew of the now deceased Joseph F. Mangieri. The case was filed on August 31, 1999. The complaint alleges two claims: first, a claim under Massachusetts General Laws Chapter 191 § 20, the omitted child statute; and second, a breach of fiduciary duty claim against appellee Paul Mangieri based on his actions as executor of the estate of Joseph W. Mangieri. The district court granted summary judgment for appellee on November 4, 1999. For the reasons stated below, we affirm.

The essential facts are as follows: On November 2, 1984, Joseph F. Mangieri executed a will in which he divided his estate between his brothers, Robert L. and Sal Mangieri, his sister-in-law, Josephine Mangieri, and other beneficiaries. The 1984 will contained a clause stating that any children not provided for in the will were intentionally omitted from the will. The 1984 will made no provision for decedent's son, Robert W. Mangieri. On February 12, 1987, Joseph executed a second will. The 1987 will did not make any provision for Robert; however, in contrast to the 1984 will, it did not expressly state that this omission was intentional. The 1987 will left the entire estate to testator's nephew, Paul Mangieri. Paul Mangieri was also named executor of the 1987 will. On May 28, 1997, Joseph directed his attorney to draw up a new will, which, if executed, would have left the bulk of his estate to his son Robert. Joseph died on June 10, 1997 without having signed the new will.

A trial ensued in the Massachusetts Probate Court. On April 12, 1999, the probate court issued detailed findings of fact and conclusions of law. For our purposes, it is only relevant that (1) the court explicitly found that testator-decedent had deliberately left his son Robert out of the 1987 will, and (2) the court admitted the 1987 will to probate as the Last Will and Testament of the Decedent. Robert Mangieri neither filed a motion to amend the probate court's findings of fact nor appealed the court's judgment.

On August 31, 1999, appellant filed suit against Paul Mangieri, as executor of the estate of Joseph F. Mangieri, in the United States District Court for the District of Massachusetts. As indicated, the

complaint alleges (1) a claim under Massachusetts General Laws Chapter 191 s. 20, the omitted child statute, and (2) that Paul Mangieri committed a breach of his fiduciary duty as executor of Joseph F. Mangieri's estate by failing to consider Robert's claim as an omitted child and thus failing to protect Robert's interest as one of the testator's heirs. Appellant alleges that jurisdiction is proper pursuant to 28 U.S.C. s. 1332, the federal diversity of citizenship statute.

At the time appellant filed his complaint in federal court, he simultaneously filed a motion for an ex parte temporary restraining order. Following a hearing, the trial court denied the motion on September 2, 1999. After notice to opposing counsel was provided, the court held a second hearing on September 8, 1999. At that time, appellee filed a motion to dismiss, which the district court construed as a motion for summary judgment. Thereafter, on September 15th, appellant renewed his motion for a preliminary injunction. On November 4, 1999, the district court issued an order granting appellee's motion to dismiss, denying appellant's motion for preliminary injunction, and entering judgment for appellee, Paul Mangieri. The court reasoned, in part, that:

The core issues that require dismissal of this case in the view of this court are that (1) this court lacks authority to hear and resolve this case on the merits because this controversy is within the jurisdiction of the Probate Court of the Commonwealth of Massachusetts and that court has taken jurisdiction and issued findings and conclusions that preclude plaintiff's claim, and (2) this court either lacks jurisdiction . . . or in the exercise of discretion should not exercise jurisdiction to make any order that would be inconsistent with or otherwise impede completion of proceedings in that court before it has reached a final disposition. Mangieri v. Mangieri, No. 99-11812, slip op. at 7 (D. Mass. Nov. 4, 1999).

We believe that the district court's ruling in this case is amply supported by both the record and the law and needs little analysis. Under the probate exception to diversity jurisdiction, "a federal court may not probate a will, administer an estate, or entertain an action that would interfere with pending probate proceedings in a state court or with a state court's control of property in its custody." Ashton v. Josephine Bay Paul & C. Michael Paul Found., Inc., 918 F.2d 1065, 1071 (2d Cir. 1990) (citing Markham v. Allen, 326 U.S. 490, 494

(1946)). While "[t]he precise scope of the probate exception has not been clearly established," it is clear that "[a]s a general matter, courts tend to view the probate exception as extending to all suits 'ancillary' to the probate of a will." Georges v. Glick, 856 F.2d 971, 973 (7th Cir. 1988) (citing Dragan v. Miller, 679 F.2d 712, 715 (7th Cir. 1982)).

In this Circuit, we have previously stated:

It is obvious that insofar as the complaint requests the district court to order the defendants to turn over to the plaintiff property which they received in their capacity as fiduciaries, and for which they are accountable to the probate court, the federal district court had no jurisdiction. Kittredge v. Stevens, 126 F.2d 263, 266 (1st Cir. 1942). Against this background, it is clear that this case falls squarely within the probate exception to the diversity jurisdiction of the district court. First, appellant's claim is within the jurisdiction of the Massachusetts Probate Court. Second, as appellant concedes, the relief he requests would require the district court to set aside the ruling of the probate court that appellant Robert was deliberately omitted from the 1987 will and that the 1987 will must be admitted to probate as the Last Will and Testament of the Decedent. In fact, the complaint "demands that [the district court] find Plaintiff is an omitted child, is entitled to an intestate share of the testator-decedent, Joseph F. Mangieri's estate, and order Paul Mangieri, as executor, to distribute the estate accordingly."

In our view, the district court correctly declined to do so on the ground that this would improperly interfere with a probate proceeding currently pending before the Massachusetts State Probate Court. (2)

For the reasons stated, the decision of the district court is **affirmed**.

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(1). Of the Ninth Circuit, sitting by designation.

(2). In light of our conclusion that the probate exception to federal diversity jurisdiction applies to this case, we need not address the district court's alternative holding that abstention is proper pursuant to the Rooker-Feldman doctrine. See Mangieri, No. 99-11812, slip op. at 8 (citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983), and Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923)).

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action, File Number 99-CV-11812-REK

ROBERT W. MANGIERI,
PLAINTIFF

v.

PAUL MANGIERI, as executor of the estate of Joseph F. Mangieri,
DEFENDANT

Memorandum and Order
November 4, 1999

I. Pending Matters

Pending before this court are the following motions:

(1) Defendant's Motion to Dismiss (Docket No. 9, filed September 8, 1999) and Memorandum in Support Docket No. 16, filed September 22, 1999) and Plaintiff's Opposition (Docket No. 13 and 15, filed September 15, 1999);

(2) Plaintiff's Motion for Preliminary Injunction (Docket No. 11, filed September 15, 1999) and Defendant's opposition (Docket No. 17, filed September 22, 1999).

II. Factual and Procedural Background

This case arises from a will contest between the only son and a nephew of the now deceased Joseph F. Mangieri.

On April 12, 1999, after a trial on the issue of revocation and undue influence, the Probate Court in Barnstable, Massachusetts, of the Commonwealth of Massachusetts, issued an
Order that included findings of fact and conclusions of law regarding the contested last will and testament of Joseph F. Mangieri. I recite the relevant factual findings below for the purpose of context and background for this memorandum.

On February 12, 1987, Joseph F. Mangieri (hereinafter "Decedent") executed an instrument as his last will and testament that did not make any provision for his only child, Robert Mangieri (hereinafter "Robert") because of an apparently estranged relationship between father and son. The will left everything to the Decedent's nephew, Paul Mangieri (hereinafter "Paul"), and also named Paul as the executor.

In July of 1993, on the occasion of Paul's birthday, the Decedent visited him and gave him the original 1987 will along with a deed to a cemetery plot and a Weatherby rifle and rifle case. The Decedent told Paul and his wife Cathy that Paul was to inherit his entire estate. Paul testified that he put the will in his attic for safekeeping.

Between February of 1987 and May of 1997, the Decedent and his son, Robert, reconciled their relationship and on May 28, 1997, the Decedent instructed his attorney, Brooks Thayer at the law firm LaTanzi, Spaulding and Landreth to prepare a will naming his son as executor and leaving his entire estate to his son, his daughter-in-law, and his brother.

The Decedent died on June 10, 1997, without having executed the 1997 will.

Although the original 1987 will leaving everything to Paul could not be located upon the Decedent's death (the will's envelope was in Paul's attic, but it was empty), the probate court found that, contrary to Robert's assertions, the Decedent had not revoked his 1987 will.

The Probate Court also found that the Decedent had deliberately left Robert out of his 1987 will, providing a motive for Robert to destroy the will (and thus an explanation of its disappearance) if he had come upon it after his father's death.

On April 12, 1999, the Probate Court ordered that the photocopy of the Decedent's will dated February 12, 1987, that was kept in the Decedent's lawyer's office, shall be admitted to probate as

the Last Will and Testament of the Decedent and that a decree shall issue appointing Paul Mangieri as executor.

On August 31, 1999, Robert filed suit against Paul Mangieri, as executor of the estate of Joseph F. Mangieri, in this United States District Court for the District of Massachusetts alleging (1) a claim under Massachusetts General Laws, Chapter 191, Section 20, as an "omitted child"; and (2) that defendant committed a breach of his fiduciary duty as executor of Joseph F. Mangieri's estate by failing to consider the plaintiff's claim as an omitted child and thus by failing to protect plaintiff's interest as possibly one of the testator's heirs.

Immediately upon filing suit in this federal district court, Robert Mangieri filed a Motion for an Ex Parte Temporary Restraining Order (Docket No. 2, filed August 31, 1999) on which the court heard evidence and argument on September 2, 1999. On the basis of all the oral and filed submissions then before the court, and for reasons stated orally and summarized here, the court found: (a) that plaintiff had failed to show a likelihood of success on the merits of his contention that the absence of a clause in the 1987 will of Joseph F. Mangieri, that appeared in his 1984 will, manifested that his leaving his child Robert W. Mangieri of the 1987 will was not intentional, -- had railed to show that he is likely to succeed on his claim as an "omitted child" under Mass. Gen. Laws ch. 191, 20; (b) that plaintiff had failed to show irreparable harm that would warrant preliminary equitable relief; (c) that plaintiff had failed to show a balance of hardship that would support preliminary equitable relief; and (d) that plaintiff had failed to show that public interest would be better served by granting than by denying preliminary equitable relief. The court therefore denied the Motion for Ex Parte Temporary Restraining Order (Docket No. 2) and scheduled a time for hearing the motion for a temporary restraining order after appropriate notice.

The hearing after notice was convened on September 8, 1999. On the basis of all the oral and filed submissions and oral argument the court DISMISSED WITHOUT PREJUDICE the special defenses asserted in the defendant's Motion to Dismiss (Docket No. 9, filed September 8, 1999). The court deferred ruling on other aspects of the Motion to Dismiss and accepted the agreement of the parties to submit the case on the merits forthwith rather than going through a two-phase process of hearing, first on preliminary injunction and, second, at a later

time, a trial or hearing on the merits. Defendant orally moved for summary judgment, and the court, with consent of the parties, set a schedule for additional submissions by the parties on or before September 22, 1999. The additional submissions of the parties having been filed -- e.g., Plaintiff's renewed Motion for Preliminary Injunction (Docket No. 11, filed September 15, 1999), Plaintiff's Statement of Material Facts As To Which There Exists A Genuine Dispute (Docket No. 14), Plaintiff's Oppositions to Defendant's Motion for Summary Judgment (Docket No. 13 and ;5), Defendant's Memorandum of Law In Support of Motion for Summary Judgment (Docket No. 16) and Defendant's Opposition to Motion for Preliminary Injunction (Docket No. 17) -- the court now addresses the merits.

III. Defendant's Memorandum of Law in Support of Defendant's Motion for Summary Judgment asserts the following grounds for a Final Judgment dismissing this civil action:

> 1. To dismiss the action because the complaint fails to state a claim against the defendant upon which relief can be granted. The matter being res judicata on the issue of pretermitted child.
>
> 2. To dismiss the action or in lieu thereof to quash the return of service of the summons on the grounds that the defendant is a citizen of New York, was served in New York and was not and is not subject to service ofprocess within the District of Massachusetts.
>
> 3. To dismiss the action on the grounds that the court lacks jurisdiction because both the Plaintiff and the Defendant are citizens of the State of New York.
>
> 4. To dismiss the action on the grounds that the court lacks jurisdiction because the subject matter falls within the exclusive jurisdiction of the Probate Court in which the Estate was probated. See Ellis v. Stevens et al., 37 F. Supp. 488, 490-491 (D. Mass.] 1941), M.G.L.

ch. 215, 3 and M.G.L. ch. 191 15. Memorandum of Law in Support of Defendant's Motion for Summary Judgment (Docket No. 16, filed September 22, 1999) at 2-3.

Plaintiffs Motion in Opposition to Defendant's Motion for Summary Judgment (Docket No. 13, filed September 15, 1999) asserts that issues of fact that are material to the outcome of this case are genuinely in dispute. Plaintiff's Concise Statement of Material Facts As to Which There Exists a Genuine Dispute for Trial (Docket No. 14, filed September 15, 1999), filed to comply with Local Rule 56.1, lists the following allegedly disputed and material facts:

1. Whether the Plaintiff's Complaint alleges a viable cause of action against the Defendant on which relief can be granted.

2. Whether the doctrine of res judicata applies to the Plaintiff's current claims due to the Findings of Fact and Conclusions of Law set forth by the Barnstable County Probate Court.

3. Whether the service on the Defendant in New York state was insufficient ac a matter of law.

4 Whether the Defendant is subject to in personam jurisdiction in the District of Massachusetts due to his status as executor of the testator-decedent's Will.

5. Whether complete diversity of citizenship exists between the Plaintiff and Defendant so as to confer subject matter jurisdiction upon this Honorable Court.

6. Whether this Honorable Court is precluded from subject matter jurisdiction due to the exclusive jurisdiction of the Barnstable County Probate Court.

7. Whether the District Court should "abstain" from hearing the matter under the "domestic relations exception" to diversity or the "Burford Abstention Doctrine."

8. Whether the case of Ellis v. Stevens, et al., 37 F.Supp. 488 (D. Mass. 1941) precludes the Plaintiff from recovering. Docket No. 14 at 1-2.

The core issues that require dismissal of this case in the view of this court are that this court lacks authority to hear and resolve this case on the merits because this controversy is within the jurisdiction of the Probate Court of the Commonwealth of Massachusetts and that court has taken jurisdiction and issued findings and conclusions that preclude plaintiff's claim, and e this court either lacks jurisdiction (as the point is sometimes expressed) or in the exercise of discretion should not exercise jurisdiction to make any order that would be inconsistent with or otherwise impede completion of proceedings in that court before it has reached a final disposition.

In other words, in so far as plaintiff is asking this court to consider the merits of his claim as an "omitted child" under Mass. Gen. Laws ch. 191, 20, with regard to the probating of the will of Joseph F. Mangieri, that is a claim that is properly heard in the Probate Court of the Commonwealth of Massachusetts. See Mass. Gen. Laws 215, 3. See also Markham v. Allen, 326 U.S. 490, 494 (1946) (stating the by now axiomatic proposition that "the probate exception to federal diversity jurisdiction is a common law limitation which holds simply that a federal court has no jurisdiction to probate a will or administer an estate"); Kittredge v. Stevens, 126 F.2d 263, 266 (lst Cir.) cert. denied, 317 U.S. 642 (1942) (holding that, according to the Princess Lida Doctrine, a federal district court has no jurisdiction over a case which would involve the examination of the general administration of an estate by a state probate court).

And, if plaintiff is asking this court to review the Probate Court's decision for error in its finding that Robert was deliberately omitted from the 1987 will, that review must be by the Massachusetts Court of Appeals or by the Supreme Judicial Court of Massachusetts in accordance with Mass. Gen. Laws ch. 215, 9. See also Rooker v. Fidelity Trust Co., 263 U.S. 413, 483 & n. 16 (1923) (announcing the now-called "Rooker-Feldman" doctrine that a federal district court lacks appellate jurisdiction to review a state court judgment); District

of Columbia Court of AnDeals v. Feldman, 460 U.S. 462, 482-86 & n. 16 (1983) (reiterating the viability of the "Rooker-Feldman" doctrine that a federal district court lacks appellate jurisdiction to review a state court judgment and that such "impermissible appellate review may occur [even] when a district court is asked to entertain a claim that was not ... argued in the state court but is inextricably intertwined with the state court judgment"). The two claims presented here -- alleging a right of inheritance as an "omitted child" and a breach of fiduciary duty by the executor of the estate for a failure to consider the "omitted child" claim -- are sufficiently "intertwined" with the probate court proceedings so as to require state court appellate jurisdiction, not federal court jurisdiction. See Feldman, 460 U.S. at 483.

ORDER

For the foregoing reasons, it is ORDERED:

(1) Defendant's Motion to Dismiss (Docket No. 9, filed September 8, 1999) is ALLOWED;
(2) Plaintiff's Motion for Preliminary Injunction (Docket No. 11, filed September 15, 1999) is DENIED;
(3) The Clerk is directed to enter forthwith on a separate document a Final Judgment as follows:

For the reasons stated with the Memorandum of this date, it is Ordered:

Judgment for the defendant, Paul Mangieri.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action, File Number 99-CV-11812-REK

ROBERT W. MANGIERI,
PLAINTIFF

v.

PAUL MANGIERI, as executor of the estate of Joseph F. Mangieri,
DEFENDANT

Final Judgment

November 4, 1999

For the reasons stated with the Memorandum of this date, it is Ordered:

Judgment for the defendant, Paul Mangieri.

Approved:

/s/ Robert Keeton
United States District Judge

By the Court,

/s/ Craig Nicewicz
Craig Nicewicz, Deputy Clerk

STATUTES AND CONSTITUTIONAL PROVISIONS

U.S. Const., art. III

Section 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

28 U.S.C. Section 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. Section 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between -

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be

adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title -

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be

deemed to be a citizen only of the same State as the infant or incompetent.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

Mass. Gen. Laws Chapter 191: Section 20. Omitted children.

If a testator omits to provide in his will for any of his children, whether born before or after the testator's death, or for the issue of a deceased child, whether born before or after the testator's death, they shall take the same share of his estate which they would have taken if he had died intestate, unless they have been provided for by the testator in his lifetime or unless it appears that the omission was intentional and not occasioned by accident or mistake; provided, however, that no such child or issue shall take any share in any real property in the testator's estate unless a claim is filed in the registry of probate by or in behalf of such child or any of such issue within one year after the date of the approval of the bond of the executor.

Mass. Gen. Laws Chapter 215: Section 3. General provisions.

Probate courts shall have jurisdiction of probate of wills, of granting administration on the estates of persons who at the time of their decease were inhabitants of or residents in their respective counties and of persons who die out of the commonwealth leaving estate to be administered within their respective counties; of the appointment of guardians and conservators; of all matters relative to the estates of such deceased persons and wards; of petitions for the adoption of children, and for change of names; or proceedings transferred to it under the provisions of section four A of chapter two hundred and eleven; and of such other matters as have been or may be placed within their jurisdiction. Whenever service of any notice, summons, citation, order or other process in any of the foregoing proceedings is ordered to be made by publication the names of the estates or parties to such proceedings shall be printed in bold type.

Probate courts have exclusive original jurisdiction of actions for divorce or for affirming or annulling marriage.

Probate courts shall have exclusive original jurisdiction of all actions concerning the execution and validity of health care proxies created pursuant to chapter two hundred and one D or disputes arising thereunder.